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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 87

A. R. TUCKER APPELLANT,

vs.

THE STATE OF TEXAS

APPEAL FROM THE COUNTY COURT OF MEDINA COUNTY, STATE OF TEXAS

FILED MAY 24, 1945.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1945.

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IN JUSTICE COURT, PRECINCT NO. ONE, MEDINA COUNTY, TEXAS

No. 4566

COMPLAINT—Filed October 10, 1944

In the Name and by the Authority of the State of Texas:

Before Me, the undersigned authority, on this day personally appeared A. B. Purinton who, after being by me duly sworn, on oath deposes and says (that he has good reason to believe and does believe and charge) that one A. R. Tucker on (or about) the 5th day of October A. D. 1944, and before the making and filing of this complaint, in Medina County, State of Texas, did then and there enter upon premises owned by A. B. Purinton, and was then and there a peddler and hawker of goods and merchandise, and did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same, contrary to the forms of the Statute in such cases made and provided and against the peace and dignity of the State.

(Signed) A. B. Purinton.

Sworn to and subscribed before me this 10th day of October, A. D. 1944.

(Signed) Frank X. Vance, County Attorney, Medina County, Texas.

[File endorsement omitted.]

[fol. 4] IN THE COUNTY COURT OF MEDINA COUNTY, TEXAS

No. 1679

THE STATE OF TEXAS

vs.

A. R. TUCKER

JUDGMENT—January 29, 1945

On this the 29th day of January, 1945, this cause was called for trial, and came to the State by her attorney, and

came the Defendant in person and by attorney, and all parties announced ready for trial; the defendant, A. R. Tucker, pleaded not guilty to the complaint and waived a trial by jury, and submitted the decision of the cause to the Court. And the Court having heard the complaint read, and the defendant's plea of not guilty thereto, and having heard the evidence and argument of counsel, finds from the evidence that the defendant is guilty as charged in the complaint and assesses his punishment at a fine of One Dollar and costs of court.

It is therefore considered, ordered, and adjudged by the Court that the State of Texas do have and recover of the defendant, A. R. Tucker, the said fine of One Dollar and all costs of this prosecution, and orders the said defendant committed to the custody of the sheriff, who will commit him forthwith to jail in Medina County until such fine and costs are paid. And execution may issue against the property of the said defendant for the amount of such fine and costs.

(Signed) Arthur H. Rothe, Judge.

[fol. 5] IN THE COUNTY COURT OF MEDINA COUNTY

[Title omitted]

MOTION TO DISMISS

Now comes the defendant and moves the court to dismiss this cause and for discharge upon the following grounds:

1. The complaint is invalid and does not state facts sufficient to constitute an offense under the law.

2. It appears from the evidence that this court is without jurisdiction to try the case, in that the complaining witness is not the owner of property alleged by the complaint from which the defendant refused to leave, but that said premises is owned, managed and controlled by the United States Government over which exclusive jurisdiction is retained by the federal court and federal government and not the state court or state government.

3. The law in question, as construed and applied to the particular facts and circumstances shown in the evidence in this case, is invalid and void, because it abridges the right

of freedom of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution, as well as the similar provision in the Constitution of this State.

4. The prosecution has wholly failed to make out a case against the defendant and the evidence shows that the defendant is not guilty of the offense charged.

Wherefore the defendant prays that the court dismiss the case and that the defendant be discharged.

Tom S. Williams, Attorney for Defendant.

Motion refused.

Arthur H. Rothe, Judge.

[fol. 6] In the County Court of Medina County

[Title omitted]

Defendant's Second Motion to Dismiss

Now comes the defendant at the close of all the evidence and moves the court to dismiss the complaint and for a finding of "not guilty" upon the following grounds:

1. It appears from the evidence that this court is without jurisdiction to hear this case, in that the undisputed evidence shows that the complaining witness is not the owner of the premises as alleged in the complaint and from which it was alleged the defendant refused to leave; but the undisputed evidence shows that the premises are owned, managed and controlled by the United States Government over which exclusive jurisdiction is retained by said United States Government; that said prosecution as it now appears from the undisputed evidence is for the violation of a "Federal Regulation" over which the State of Texas has no jurisdiction, and not for the violation of any state statute of which this court has jurisdiction.

2. The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

3. The undisputed evidence shows that defendant is an ordained minister of Jehovah God, preaching the gospel of God's kingdom by distributing literature containing Bible

sermons, and therefore the statute as properly construed does not apply to the activity of defendant.'

4. If the statute in question is construed and applied to cover the defendant's activity, then it unlawfully abridges and denies defendant's right of worship, speech and press, contrary to the First and Fourteenth Amendments to the United States Constitution.

[fols. 7-10] 5. If the statute is construed and applied to cover the defendants activity, then it unlawfully abridges and denies the defendant's right of freedom of conscience, freedom to worship Almighty God, freedom of speech and press, contrary to the Constitution of the State of Texas.

Wherefore the defendant prays the court that this court enter a judgment discharging the defendant upon a finding of not guilty.

Tom S. Williams, Attorney for Defendant.

Motion Refused.

Arthur A. Rothe, Judge.

[fol. 11] In County Court of Medina County

[Title omitted]

Defendant's First Amended Motion for a New Trial

Now comes the defendant A. R. Tucker in the above entitled and numbered cause and with leave of the court first had and obtained and files this his first amended motion for a new trial in lieu of his original motion for new trial filed herein, and moves the court to set aside the verdict and judgment herein rendered against him on the 29th day of January, A. D. 1945, and grant him a new trial for the following reasons, to wit:

1. The judgment of the court is contrary to the evidence.

2. The judgment of the court is contrary to the law.

3. The court committed error in overruling defendants first motion for judgment and dismissal filed at the close of the states main testimony.

4. The court committed error in overruling defendant's second motion for judgment and dismissal filed at the close of all the evidence of the state and defendant.

A. R. Tucker, Defendant, by Tom S. Williams, Attorney for Defendant.

[fol. 12] In County Court of Medina County

[Title omitted]

Order Overruling Defendant's Motion for a New Trial

On this the 5th day of March, A. D. 1945, in the above entitled and numbered cause, came on to be heard and considered defendant's first amended motion for a new trial; and came the defendant by his attorney of record and the State of Texas by its county attorney; and the court having read said motion, and having heard argument of counsel thereon, and duly considering same, is of the opinion that said motion for new trial should be in ail things overruled, and it is so Ordered, Adjudged, and Decreed by the court, to which action of the court the defendant in open court duly excepted.

Arthur H. Rothe, Judge.

[fol. 13] In Justice Court, Precinct No. One, Medina County, Texas

No. 4566

The State of Texas

vs.

A. R. Tucker

Frank X. Vance, State's Attorney.
Tom S. Williams, Defendant's Attorney.

Transcript of Judgment

Complaint Filed the 10th day of October, 1944.

Made by A. B. Purinton Against A. R. Tucker

Charged with enter upon premises owned by A. B. Purinton and merchandise and did then and there unlawfully and and was then and there a peddler and hawker of goods

wilfully refuse to leave said premises after being notified to do so by said A. B. Purinton. Warrant issued the 10th day of October, 1944.

Placed in the hands of Sheriff Jack M. Fusselman. Executed 10th day of October, 1944

This 10th day of October, A. D. 1944, in open Court this cause was called for trial, and both parties appeared and announced ready for trial, and the defendant waived a jury; thereupon the Complaint was read to the defendant, and he pleaded not guilty to the accusation therein contained; and the Court having heard the evidence, it is considered and adjudged by the Court that said defendant A. R. Tucker is guilty of the offense of —— —— and assesses his punishment therefor at a fine of One Dollar.

It is therefore ordered and adjudged by the Court that the State of Texas do have and recover of the defendant A. R. Tucker the sum of One Dollar Fine, and all the costs of this prosecution, and that the defendant remain in custody of the Sheriff of Medina County, Texas, until said fine and costs are fully paid; and further, that Capias Pro Fine and Execution issue to collect the same.

[fols. 14-17] Witness my official signature this 10th day of October, 1944.

(Signed) H. V. Haass J. P.

Justice's Certificate to foregoing transcript omitted in printing.

[fol. 18] [File endorsement omitted.]

[fol. 19] In the County Court of Medina County, Texas

No. 1679

The State of Texas

vs.

A. R. Tucker

Statement of Evidence—Filed April 17, 1945

Be It Remembered, that heretofore, to-wit, on the 29th day of January, A. D. 1945, the same being one of the days of said term of said court, the above numbered and entitled

cause came on for trial before the Hon. Arthur H. Rothe, Judge of said Court.

Frank X. Vance, Esq., County Attorney, Attorney for the Plaintiff, State of Texas; Tom Williams, Esq., Attorney for the Defendant.

Whereupon, the following evidence was introduced and proceedings had, to-wit:

[fol. 20] A. B. PURINTON, a witness for the State, was first duly sworn and testified as follows:

Direct examination.

Questions by Mr. Vance:

Q. Your name is A. B. Purinton?

A. Yes, sir.

Q. That is spelled P-u-r-i-n-t-o-n?

A. Yes, sir.

Q. What is your job, Mr. Purinton?

A. I am the housing manager of the Hondo Navigation Village.

Q. Now, in reference to your duties out there on this job, would you briefly tell the court just what those duties cover in reference to the village?

A. Well, my duties are to rent the various housing units, and to supervise work that is done out there, and to see that the rules and regulations of the U. S. Government in connection with the project are carried out and enforced.

Q. What are some of those rules and regulations? Do you have any in reference to peddlers and hawkers?

A. We have a regulation there that soliciting, peddling and hawking of any kind is not allowed without permission of the manager.

Q. Without permission of the manager. Do you know Mr. Tucker here, the defendant?

A. Yes, sir.

Q. Did you ever have occasion to see him on or about the 5th of October, 1944?

A. Yes, sir.

[fol. 21] Q. Where did you see him?

A. In the Hondo Navigation Village.

Q. And what was he doing out there?

A. Just to get this date straight may I ask if the night before was the 5th?

Q. In reference to on or about that date.

A. He came to my house the evening—I think the evening of the 4th, or on or about that date, and sold me a pamphlet.

Q. A religious pamphlet?

A. Yes, sir, published by the Watchtower organization of Jehovah's witnesses—connected with them.

Q. Had you had a conversation with him previous to that out there at the Village?

A. On several occasions.

Q. What was the nature of those conversations?

A. The first time he was in the Village going from house to house I sent for him to come over to the office and I informed him that we did not allow that and that he would have to quit.

Q. Wuit?

A. Soliciting and doing whatever he was doing, bothering the people.

Q. As far as the village is concerned?

A. Yes.

Q. You are in full charge of the Village as far as the management of the Village proper is concerned?

A. I am in entire charge.

Q. Collecting the rent and renting the property, is that right?

A. Yes, sir.

[fol. 22] Q. Now, I believe you stated he was to leave?

A. Yes.

Q. Did he leave?

A. I believe that in this case he did leave, but he came back and continued his work, and two or three other times I gave him orders to leave and he refused to do so.

Q. He refused to do so?

A. In one or two cases he refused to leave the project; he went on to other houses after I told him.

Q. Do you know Mr. Williams, D. C. Williams?

A. Yes, sir.

Q. Did you have any conversation with Mr. Williams in the presence of Mr. Tucker?

A. I did.

Q. What was the nature of that?

A. I told him that he would have to leave; I told him before he was not allowed to solicit or peddle on that project and he refused to leave.

Q. Would you advise the court, or tell the court, just why you have such a regulation out there, about peddling and soliciting?

Mr. Williams: We object to that as being immaterial. Why they have it is sufficient, if they do have it. If they have it its under legal valid regulations of the United States Government and does not concern this court nor the witness or the defendant either why the Federal Government might have a regulation of that kind. The regulation would have to speak for itself; he can't explain it.

[fol. 23] The Court: Sustain the objection.

Q. Now, what do the residents of the Village—what are their occupations?

A. One member of each family is required to work at the air field or some organization in town which has something to do with war work.

Q. They all work at the same shifts or hours?

A. No, they do not. Some work at day and some work at night.

Q. Do some sleep there during the daytime and some sleep at night?

A. They do at various times.

Mr. Vance: Your witness.

Cross-examination.

Questions by Mr. Williams:

Q. Now, Mr. Purinton, how long have you lived here in Hondo?

A. Since the middle of June of last year.

Q. Have you been connected with the Hondo Navigation Village since you moved to Hondo?

A. Yes.

Q. And this Hondo Navigation Village belongs to the Federal Housing Commission, is that right?

A. It is operated by the Federal Public Housing Authority, which is a branch of the National Housing Agency.

Q. Where did you come from?

A. Fort Worth, Texas.

Q. Were you connected with the Federal Housing Agency in Fort Worth?

A. No, I was not.

Q. You never worked for them before?

[fol. 24] A. No, sir.

Q. This is your first job with them?

A. My first job with the Federal Public Housing Authority. I have worked for other agencies under the same agency.

Q. Now, this Village that you have under your control out here belongs to the U. S. Government?

A. Yes, sir.

Q. Any regulation that is in force out there is a Federal regulation, is it not?

A. Not necessarily, some regulations are not.

Q. Well now, this regulation that you just told the State's attorney about was a Federal regulation, wasn't it?

A. It is.

Q. That no peddlers or hawkers can trade, could not come into this Village without first getting permission from the manager?

A. Yes.

Q. And it was for the enforcement of this regulation that you called upon the county authorities of Medina County to carry out, was it not?

A. Yes.

Q. Why didn't you call in a United States Marshal?

A. Well, there was none here.

Q. There were none in Texas?

A. Well, I understand there are some in Texas.

Q. Did you make a complaint to the Federal Government for the violation of this regulation?

A. No, it was not necessary.

[fol. 25] Q. You own this Navigation Village?

A. The government owns the land.

Q. Well, do you own it?

A. I do not own it except as an agent of the government.

Q. Then, what you have signed here and swore to is not true. You allege in the complaint that you are the owner of this property?

A. As the agent of the government.

Q. You don't say anything about as the agent of the government?

A. Technically, I am.

Mr. Williams: I will read the complaint to you, it is as follows: In Justice Court, Precinct No. One, Medina County,

No. 4566, in the name and by the authority of the State of Texas:

Before me, the undersigned authority, on this day personally appeared A. B. Purinton who, after being by me duly sworn, on oath deposes and says (that he has good reason to believe and does believe and charge) that one A. R. Tucker on (or about) the 5th day of October A. D. 1944, and before the making and filing of this complaint, in Medina County, State of Texas, did then and there enter upon premises owned by A. B. Purinton, and was then and there a peddler and hawker of goods and merchandise, and did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same, contrary to the forms of the Statute in such cases made and provided and against the peace and dignity of the State.

A. B. Purinton.

[fol. 26] Sworn to and Subscribed before me this 10th day of October, A. D. 1944, Frank X. Vance, County Attorney, Medina County, Texas.

No. 4566 Complaint The State of Texas vs. A. R. Tucker. Filed 10 day of October 1944, H. V. Haass, Justice of the Peace, Prec. No. One, Medina Co.

Q. You claim now to be the owner of that property?

Mr. Vance: If you understand the statute the proper way to allege this type of complaint is if a man is a special owner that he is in authority and you wouldn't have to know who is the fee title owner of the land. Whoever is in charge.

Mr. Williams: The point I want to make here is that this property belongs to the Federal Government and that this court, a state court, has no jurisdiction over it and that if the defendant here has violated any valid law or regulation it is a violation of a Federal law or regulation and not a state law. The complaining witness has alleged here that he is the owner of this property. Now, for the first time we have an opportunity in this court to bring out that he doesn't own the property; that he is attempting to enforce in a state court a federal law, which cannot be done. And it is for that purpose that I am soliciting these answers from the complaining witness, and now it is evident that he doesn't own this property and evident that if there is any regulation that he is attempting to enforce, it is a Federal

regulation, and can only be enforced in a Federal court. We move the court to dismiss this complaint; because the, [fol. 27] court does not have jurisdiction to proceed further. The jurisdiction properly belongs in the Federal court and not in the state court.

Mr. Vance: If your Honor please, it would be the same as saying if I had a house rented out there on government property and a man came in there and attempted to take any of my property, or enter my house, I would have to take it up with the Federal Government rather than with the local state authorities; or, if a murder was committed, it would have to be taken care of by the Federal Government and not the local state authorities. Because it was government property the State of Texas couldn't handle it.

Mr. Williams: That is exactly my position, your Honor, and that is the law, but now this case is foreign from that. There has been no murder, no burglary, and this man on the stand here, the complaining witness, doesn't have that property rented out there, he is merely an agent of the United States Government. Navigation Village belongs to the United States Government. If there is a valid law or regulation that prohibits an individual from going out into Navigation Village and doing the things that the proof shows the defendant did it would have to be a Federal law and it must be enforced in a Federal court and it is a matter for this court to determine. We could have demurred to this complaint had the true facts been set out in it. We now move the court to dismiss for want of jurisdiction.

The Court: Motion overruled.

Mr. Williams: Note our exception.

[fol. 28] Q. All right, now, Mr. Purinton, you say you have regulations out there that prohibit peddlers?

A. Yes.

Q. That they can come in with your permission?

A. Yes.

Q. Who makes those regulations?

A. The general regulations are made ~~in this case out of~~ Washington.

Q. Now, do you have a regulation that prohibits ministers of the gospel from going out there?

A. The regulation doesn't specify certain people; doesn't say which ones to prohibit.

Q. Well, I will ask you does the regulation prohibit the carrying on of preaching out in the Village by any denomination?

A. We have a rule which is carried out I think in all of the projects. We have a rule that the churches can go in together, each denomination, and have an inter-denominational Sunday School. They are not allowed to have denominations of their own meeting because there are so many of them they can't be taken care of there.

Q. You wouldn't permit a Baptist to go out there and conduct a service?

A. Not without a special permit.

Q. Who would he have to get it from?

A. From me.

Q. Would a Methodist have to get permission from you?

A. That is right.

Q. It is in your power to grant or refuse permission?

[fol. 29] A. It is.

Q. You of course know this man here is a minister, do you not?

A. I understand he is.

Q. That this method that he has of going from house to house offering literature is his way of preaching the gospel, you know that?

A. Yes, I believe he did, I understand that.

Q. Your regulations only apply to peddlers and hawkers of merchandise, does it not?

A. Solicitors, including that.

Q. Now, when was the first time you saw this defendant?

A. It was—it must have been a month before this case finally came to a head.

Q. Was he, the defendant, at the Navigation Village when you met him?

A. Yes.

Q. Did you have a conversation with him at that time?

A. Yes.

Q. What was he doing out there?

A. He was going from door to door.

Q. Was he knocking on the doors?

A. I think so; I didn't hear him knock.

Q. Was that all he was doing; did you stop him?

A. I sent one of my men to tell him to come over to the office, and I told him to stop.

Q. Was he going to your door or somebody else's?

A. He did come to my door.

Q. Were you there?

[fol. 30] A. I wasn't.

Q. Was that the first time or some other time?

A. That was the first time.

Q. That was not the first time he was out there?

A. No, it wasn't.

Q. Well, did he come over to your office when you requested him to do so?

A. He did.

Q. Did you have a conversation with him?

A. Yes.

Q. Did he tell you what he was doing?

A. Yes.

Q. What did you tell him?

A. I told him we couldn't allow it.

Q. What did he tell you he was doing?

A. He told me he was preaching the gospel, putting the facts before the people in their homes.

Q. Do you say now that he wasn't preaching the gospel when you sent for him?

A. No, I wouldn't say that.

Q. And you told him you didn't allow that out there?

A. Yes.

Q. If you saw fit you could have allowed it, couldn't you? It was in your power?

A. I could have.

Q. Your individual feelings in the matter prevented you from permitting him to go along?

A. My feelings were that I did not want the members [fol. 31] in the Village disturbed. A lot of them sleep in the day time and told me that they did not want this Jehovah's witness or anybody coming to their door disturbing them when they were trying to sleep.

Q. Now, when was the next time you saw him?

A. Well, it was a day or two later, I don't know just how long.

Q. Where was he then?

A. Back out in the Village.

Q. Did he come to your house at that time?

A. No, he did not.

Q. Did you call him to your office then?

A. No, I believe that is the time I understood he was on another street away from the office. I was in a government

pickup and went around over there and told him on the street that he would have to stop soliciting and peddling.

Q. He didn't go to your house that day at all?

A. No.

Q. You have a home out there, do you not?

A. Yes.

Q. And he was calling at other peoples' homes that you had rented to?

A. Yes.

Q. Well, did he quit?

A. No, that day he did not.

Q. Then, when did you see him again; was he out there again after that?

A. Yes.

Q. Did he call at your home that time?

[fol. 32] A. I think that is the time he called at my home.

Q. Were you at home?

A. I was.

Q. What did he tell you?

A. Well, when I came to the door he seemed surprised that he came to my house, and he said, "I believe I talked to you in your office." I stated, "Yes, you know you did and I informed you at that time you couldn't solicit out here," and he started talking to me and I asked him if he had any literature or anything to sell, I said, "What do you have here to sell," and he said he had a pamphlet to sell, that it was a nickel, and I bought it.

Q. Do you know what if was?

A. I can't recall except some literature of the Jehovah's witnesses.

Q. Did you keep it?

A. I did.

Q. Did you read it?

A. No.

Q. What did you buy it for?

A. For evidence.

Q. You bought it for evidence?

A. Evidence that he was peddling.

Q. What denomination do you belong to?

A. Presbyterian Church.

Q. Did you allow Presbyterian ministers to go out there and preach?

A. I have never yet allowed Presbyterian ministers go [fol. 33] out there and preach.

Q. And you say that the Federal Government has given you authority to say who can preach out there and who cannot?

A. Yes.

Q. Did they put that authority in writing?

A. It is included in the general instructions.

Q. Are the general instructions in writing?

A. Yes.

Q. Well, the general instructions say who you may designate to preach out there and what denominations cannot?

A. The general instructions say that soliciting, peddling and hawking——

Q. We are talking about preaching now——

A. And that the housing manager has the authority to make the rules and regulations governing the Village in any way.

Q. The Federal Government gives you full control over the lives of all the people out there, is that right?

A. Yes.

Q. You say that is correct?

A. Yes, in protection of lives and things like that.

Q. I mean over what they shall do or what they shall not do out there; whether they can have their denomination preach out there or not?

A. Yes.

Q. That is up to you?

A. That is up to me.

Q. And then you were enforcing the regulation you made out of the general regulations the government gave you?

[fol. 34] A. Yes.

Q. All of this took place out there on Federal property?

A. Yes.

Q. He left your property when you told him to, didn't he?

A. Yes.

Q. Then you are not complaining about him staying on your property when you told him to leave your house that you have rented out there; he left, didn't he?

A. Yes.

Q. Your complaint is about him being on somebody else's property, isn't it; the general property that somebody has rented and paying the Government rent for?

A. That is right.

Q. That is your complaint, isn't it?

A. Generally, also my complaint is he came to my house after I told him to keep out of the entire Village and then he came to my house.

Q. You told about him being surprised when he came to your house?

A. Yes.

Q. He didn't know it was your place, did he?

A. No.

Q. You stated you purchased a booklet from him, didn't you?

A. Yes.

Q. And then after you purchased the booklet you ordered him to leave?

A. Yes.

Q. And he did leave?

A. Yes.

[fol. 35] Q. Then, you are not complaining about him refusing to leave your property, I mean the property you are living in, your home?

A. I am complaining in connection with other things that after I told him to leave the Navigation Village he did not.

Q. He made a call on your home in connection with calls he was making on other houses out there, that was the way it was?

A. Yes.

Q. Do you know of any home he refused to leave out there after the tenant or occupant ordered him to leave?

A. I can't recall.

Re-direct examination.

Questions by Mr. Vance:

Q. Mr. Purinton, in what county is the Navigation Village?

A. Medina County, Texas.

Q. That is where this took place?

A. Yes.

Q. When Mr. Tucker left your house that night when he was at your home do you know if he left the premises of the Village or not, or do you know?

A. No, I do not.

Mr. Vance: That is all.

Mr. Williams: No further questions.

(Witness Excused.)

[fol. 36] D. C. WILLIAMS, a witness for the State, was first duly sworn and testified as follows:

Direct examination.

Questions by Mr. Vance:

Q. Your name is D. C. Williams?

A. Yes, sir.

Q. On or about October 5th, 1944, were you a deputy sheriff in Medina County?

A. Yes, sir.

Q. Did you have occasion to go out to the Village?

A. I beg your pardon?

Q. Did you have occasion to go out the Navigation Village on or about the 5th of October, 1944?

A. Yes, sir.

Q. And how come you to go out there?

A. I was called out there.

Q. By whom?

A. Mr. Purinton.

Q. Did you have occasion while out there to see Mr. Tucker?

A. Yes, sir.

Q. What was the nature of your visit out at the Village?

A. Well, I was called out there to—Mr. Tucker was out there and Mr. Purinton asked me to tell him to leave the property and not bother the people in the houses, some of which were sleeping in the day time, so I went and met Mr. Tucker and told him my name and who I was and that I had been told to ask him to leave the premises, and he told me that he would not leave because he had as much right out there as anybody else. I asked him if he had [fol. 37] a permit and he said no; so, that was just about all that was said at this time, just a few words you know and so the next time I went out there, the second trip, I had a warrant for him, for his arrest, so Mr. Purinton went with me and talked to Mr. Tucker and asked him if he was going to leave and he told me that he had as much right as anybody else and of course I served the warrant on him and brought him up and locked him up in jail.

Mr. Vance: Your witness.

Cross-examination.

Questions by Mr. Williams:

Q. Did he tell you what he was doing there, Mr. Williams?
A. No, not exactly.
Q. Did he tell you that he was a preacher?
A. I beg your pardon.
Q. Did he tell you that he was a preacher?
A. No, he didn't tell me that, he just told me that he had a right to go out there and call on these people and of course I didn't go in detail because after all the warrant was for his arrest and I served my warrant, which was my duty.

Mr. Williams: That is all, Mr. Williams.
Mr. Vance: The State rests.

Motion to Dismiss

Mr. Williams: The defendant offers this first written motion to dismiss, your Honor.
The Court: Motion overruled.
Mr. Williams: We ask that it be filed and note our exception.
Mr. Vance: We can consider it already filed.

[fol. 38] A. R. Tucker, the witness, was first duly sworn and testified in his own behalf as follows:

Direct examination.

Questions by Mr. Williams:

Q. Your name is Arthur Tucker?
A. Yes, sir.
Q. A. R. Tucker?
A. Yes, sir.
Q. You are the defendant in this case?
A. I am.
Q. Where were you born, Mr. Tucker?
A. State of Michigan.
Q. How long did you live in Michigan?
A. Approximately thirty-three years.
Q. How old are you now?
A. Thirty-seven.

Q. When did you leave Michigan?

A. 1943.

Q. When did you come to Texas?

A. In August of 1943.

Q. Whereabouts did you move to when you first came to Texas?

A. My first assignment was Pearsall.

Q. How long did you stay at Pearsall?

A. About three months.

Q. Where did you move to from Pearsall?

A. I came directly to Hondo, Texas.

Q. How long did you live in Hondo?

A. Nearly eight months.

[fol. 39] Q. Were you living in Hondo on or about the 5th day of October, 1944?

A. Yes, sir.

Q. Where do you now reside?

A. I live at Cuero, Texas.

Q. You moved from Hondo to Cuero?

A. Yes, sir.

Q. And you have lived in Cuero ever since?

A. I have, sir.

Q. What is your occupation?

A. I am an ordained minister of the gospel.

Q. How long have you been engaged in this occupation?

A. More than—slightly more than four years.

Q. What organization, if any, are you associated with in the pursuance of your ministerial duties?

A. I am associated with the Watchtower Bible & Tract Society, Brooklyn, New York.

Q. Is the Watchtower Bible & Tract Society a corporation?

A. It is a legal corporation, organized to advance and promote the preaching of God's kingdom.

Q. It is an organization, a corporation organized for pecuniary gain or a benevolent organization—charitable organization?

A. Charitable organization.

Q. As a minister of the gospel, do you regard yourself as one of Jehovah's witnesses?

A. I do.

Q. You go by that name generally, do you not?

A. I am recognized as one of Jehovah's witnesses.

[fol. 40] Q. Is the Watchtower Bible & Tract Society the visible head of Jehovah's witnesses?

A. Yes, sir.

Q. Who are Jehovah's witnesses?

A. There is a long list of them named in the Bible in the 11th chapter of Hebrews, Abel who was killed by his brother Cain was the first one. Generally speaking, it might be said that any person who remains faithful to Almighty God's side of the issue and upholds and preaches righteousness according to the scriptures is one of them.

Q. What were you doing in the City of Hondo, Medina County, during the eight months you lived there?

A. My work was calling upon the people preaching the good news and showing the establishment of the kingdom and trying to find those of good-will and conduct systematic Bible studies and leave with them literature which would greatly aid them in their own private studying.

Q. You say you are a minister. Do you have an ordination from your organization?

A. I have the scriptural ordination which comes from Almighty God as recorded at Isaiah 61:1-3. "The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek, he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn; To appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the gar-[fol. 41] ment of praise for the spirit of heaviness; that they might be called Trees of righteousness, The planting of the Lord, that he might be glorified." Also, I have an ordination from the Watchtower Bible & Tract Society as the visible governing body of God's Kingdom on earth.

Q. When did you become ordained as a minister?

A. In June of 1940.

Q. How did you become ordained?

A. Ordination is an acceptance by the Almighty God of one's consecration to do his will and that it visibly be made known to the peoples of the earth by baptism which symbolizes the agreement made between the individual and Almighty God.

Q. You have never attended a theological school of any kind?

A. I attended the Watchtower Bible & Tract Society College known as Gilead College of New York. This is not a theological college as that term is commonly known among the religious organizations of the day. It is used by Jehovah's witnesses exclusively for the purpose of better equipping those who attend as special ambassadors or missionary evangelists in foreign service.

Q. Did you receive a degree or a diploma from that school?

A. I have a diploma showing the finish of the regular course of study.

Q. Do you have that with you?

A. I do.

Q. May I see it? (Witness hands diploma to counsel.) We want to offer this in evidence, your Honor.

Mr. Vance: The State doesn't question his being ordained [fol. 42] or being a minister.

The Court: All right.

(The instrument in question was thereupon received in evidence by the court, was marked for identification as Defendant's Exhibit 1, and was, at the conclusion of the trial, withdrawn and a true copy substituted therefor, which is attached. For copy see index.)

Q. Now, it alleged in the complaint that you were out on A. B. Purinton's property on or about the 5th day of October, 1944, and the evidence shows that that is the United States Navigation Village. Were you in that Village on that date?

A. Yes, sir.

Q. Do you know Mr. Purinton, the complaining witness?

A. I do.

Q. When did you first see him?

A. About September, the latter part of September.

Q. Where were you—where did you see him?

A. I went out into the Village to call upon the people and saw him in his own office.

Q. Did you have a conversation with him?

A. I did.

Q. Tell the court the gist of that conversation?

A. I made known to Mr. Purinton after being directed to him as the manager of the Village that my work was that of a minister, being so recognized as such by the Watchtower Bible & Tract Society. I showed him the

literature and explained that my work was merely doing a good work, to assist the people to obtain Bible helps directing their attention to the Bible and also showing [fol. 43] them how to study the Bible systematically, and calling their attention mainly to the scriptures concerning the establishment of God's kingdom, the wonderful provisions that God has made for the people of good-will concerning that kingdom.

Q. What did he tell you?

A. He stated briefly that I would not be allowed to work in that Village according to the method I was using.

Q. Did he tell you that you were a peddler?

A. No, he didn't use any such word.

Q. Did you make known to him that you were a preacher, a minister of the gospel, and that was your mission out there?

A. Yes, sir.

Q. Calling on the people?

A. I made such very plain.

Q. Did he tell you to leave the premises?

A. He said, "You cannot work here."

Q. Couldn't work there. How were you working out there, what were you doing?

A. I was merely preaching. I was going from house to house knocking on the doors and engaging in conversation with the people that came to the doors and explaining to them the full extent of my work, how they would benefit by it.

Q. Did you refuse to leave the premises of any of the occupants or tenants out there after they requested you to leave?

A. I did not refuse to leave any house and there were no complaints that I should leave any of the houses. No one asked me to leave but Mr. Purinton and I left his house and did not return after being requested to do so. [fol. 44] There were persons who said that they would not be interested and I didn't need to waste any time with them.

Q. Did others show interest?

A. Others did, and received the literature and were glad to get it and promised to read it and invited me to come back.

Q. Now, it is in evidence that you called on Mr. Purin-

ton's home. Did you know that he was living there when you called upon that home?

A. No, I didn't have any idea that he lived there himself.

Q. Did he order you to leave?

A. He explained that I should leave the Village and never come back.

Q. However, before you left, did he make a purchase from you?

A. Yes, he received a booklet for which he gave me five cents.

Q. Now, did you leave his premises at that time?

A. I left his house and the entire Village at the moment.

Q. At the moment. Did you ever go back out to his place?

A. No.

Q. The home that he was living in?

A. At no time.

Q. Now, you are charged with being a peddler and hawker of merchandise, and Mr. Purinton has testified that he purchased a booklet from you. How do you explain that discrepancy and how do you explain that you say you are a minister and not a peddler?

A. A minister necessarily must explain and preach from what he sees in the Bible, and we do so by the publications which contain sermons directing their attention to the scrip-[fol. 45] tures, a manner which most church organizations likewise use to encourage their parishioners to examine the scriptures, they have the same means. The booklet I placed with Mr. Purinton was a written sermon.

Q. Is this done in a church or done in the street work?

A. Are you referring to the work I do?

Q. Yes, your work?

A. It is done at the houses and in the street, wherever we can contact the people.

Q. Why don't you go to your church to preach as other religious organizations do?

A. Jehovah's witnesses do not have any place called churches. Their work is directed by the scriptures in Matthew to call at the houses and speak directly to the people.

Q. Now, it is alleged that you refused to leave the premises after being requested to do so by Mr. Purinton, is that true?

A. That is true, I refused to leave Navigation Village.

Q. You mean by that you refused to leave the Navigation Village?

A. Yes, sir.

Q. Why didn't you leave the Navigation Village when you were requested to leave by Mr. Purinton.

A. The Christian is always guided by the scriptures which commands work to be done, not in obedience to man, but in obedience to Almighty God. This good gospel of the kingdom must be preached to all creatures possible and it is left up to the creature to decide and Almighty God what he wishes to do about it. Therefore, in any locality where there are people residing they have the right to [fol. 46] accept or reject visitors at their homes. Some hear this good message that I preach because the Lord is now dividing the people as sheep from goats and it is necessary that the person hear the message of the gospel in order to place himself in one group or the other.

Q. Was that your reason for refusing to leave the Navigation Village when you were requested to by the complaining witness, Mr. Purinton?

A. Yes, sir, my position is that I should obey God rather than man.

Q. Explain yourself, that is a vague statement.

A. An examination of the scriptures shows that disciples went from house to house and community to community and likewise I must do that also, and no man has the lawful right to prohibit me from carrying this good news to others, but if they do, I must obey God rather than them.

Q. Mr. Tucker, did you create a disturbance out in the Navigation Village?

A. I did not, at any time.

Q. Did you—I believe I asked this question before—did you refuse to leave the home of any individual after being requested to do so?

A. I did not. I was never requested by the occupants to do so.

Q. Then you were not out there peddling goods and merchandise on the 5th of October, 1944, as alleged in the complaint?

A. No, sir.

Q. And what were you doing out there?

A. I was preaching to the people of good-will who cared [fol. 47] to hear; I was delivering to them the message without charge concerning the establishment of the kingdom of God and inquiring of their interest so that I might call again some other day and sit down with them in their homes

and discuss the scriptures and invite them to study the Bible systematically.

Q. Mr. Tucker, is that your way of preaching and worshipping?

A. Yes. I wish merely to do a good work among all the people of good-will on the earth and then by calling upon them in their homes and inviting them to book studies and place literature explaining the Bible.

Q. That is your method of preaching, is that correct?

A. Yes, sir.

Q. And you tell the court that is what you were doing on the day you were arrested and charged in this complaint?

A. Yes.

Q. What was the name of the book you were offering to the people of Navigation Village?

A. The Truth Shall Make You Free.

Q. This book, I believe, was offered in evidence in this case at the time it was tried in Justice Court, was it not?

A. That is true.

Q. Is this the book (showing witness book)?

A. It is.

Mr. Williams: We offer it in evidence.

Mr. Vance: No objection.

(The book in question was thereupon received by the court, marked Defendant's Exhibit 2, and is attached hereto.)

[fol. 48] Cross-examination.

Questions by Mr. Vance:

Q. Mr. Tucker, how do you receive your literature, who from?

A. We have an arrangement through the Watchtower Bible & Tract Society from whom I receive the literature, that if I am constant in the work from day to day, working many hours and making backcalls on the people I have placed literature with, conducting studies and so forth, and I make my quota, I may continue to receive help.

Q. What do you mean by quota?

A. Our work is that I should go from house to house calling at least 175 hours each month and that I shall make return visits upon interested people who have expressed interest to further any interest we may have found. It is

a requirement that I make at least fifty backcalls or more each month, and if I meet these requirements I am entitled to a small allowance.

Q. Who do you receive the allowance from?

A. The Watchtower Bible & Tract Society of Brooklyn, New York.

Q. Well, now, this literature—I believe you stated that Mr. Purinton gave you five cents for some of the literature. You sell literature to those who pay for it?

A. Whoever wishes to receive such literature can contribute.

Q. Well, now, the contribution—is there a set price on the literature?

A. It belongs to the Watchtower Bible & Tract Society until it is placed into the hands of the people; they are the ones who arrange the contribution.

[fol. 49] Q. Now, then, you are paid from the Society in New York, and that is dependent upon whether you make these visits and distribute the literature?

A. Concerning my daily activities?

Q. In other words, if you did not make visits and dispose of literature you would receive no allowance?

A. If I didn't obtain the 175 hours or the fifty backcalls or more, then I would not receive any allowance.

Q. What I mean is your pay is dependent upon your dispersing this literature and making these visits, is it not?

A. If I did not place any literature, but I did go about the people explaining about God's kingdom and the scriptures, and made the 175 hours I would receive my allowance.

Q. But in other words your salary is dependent on your making so many visits, is that right, or doing so much work?

A. Yes, sir.

Q. During a month?

A. Yes, sir.

Q. Giving out this literature to those who will take it, is that right?

A. Yes, sir.

Q. And receiving pay for the literature or whatever those who give are willing to pay, is that right; donations?

A. Yes, sir.

Q. Now, if you go to the ome of a person who alleges to be or claims that he is a Christian and reads the Bible and all that, as a Christian should do, do you consider that

he was one of the goats that you spoke about if he was not interested in your particular type of literature?

[fol. 50] A. No, I have no judgment in the matter whatever; the Lord judges an individual himself and his angels, who are invisible assistants. They do the separating work. I am merely a bellboy or a telegram boy carrying the message to those who are willing to receive. My duties are that of carrying the good news of the kingdom which is soon to be established, to persons of good will and to the people of the nation and let them decide for themselves whether or not they will accept it.

Q. In other words, you are a missionary?

A. That is right.

Q. That is your method of doing it?

A. Yes, sir.

Q. Where you go as far as your denomination is concerned do you consider the other so-called Christians that are not interested in the Jehovah's witnesses group or in their teachings or their interpretation of the Bible, as Christians?

A. Well, my own opinion might be something and the Bible explanation might be another.

Q. I mean as far as your denomination, do they consider those people Christians?

Mr. Williams: Your Honor, unless he wants the defendant to go into the principal doctrines of Jehovah's witnesses I think this would be immaterial, unless the Court wants to pass on that, to hear it in its completeness.

Mr. Vance: That isn't necessary.

The Court: Continue the questioning, the witness is on [fol. 51] cross examination.

Q. Did Mr. Williams ask you if you had literature to sell and you stated yes?

A. I don't recall Mr. Williams asking any such question.

Q. You don't recall. But you did have your literature to sell?

A. Certainly.

Q. I think you stood on the streets here and have done that?

A. Yes, sir.

Mr. Vance: I believe that is all.

Mr. Williams: No further questions. The defendant rests.

Mr. Vance: The State rests.

MOTION TO DISMISS

Mr. Williams: I wish at this time to present the defendant's second written motion to dismiss and motion for acquittal.

(Motion presented and filed.)

The Court: Overruled.

Mr. Williams: Note our exception.

The Court: I want to study the cases cited and I am going to reserve judgment until I have had an opportunity to look over them. I will notify you in a day or so as to the decision I have reached.

(Testimony Closed.)

[fol. 52] COURT REPORTER'S CERTIFICATE

I, Earl B. Tippit, Court Reporter, do hereby certify that counsel for the defendant in said cause No. 1679, styled State of Texas versus A. R. Tucker, applied to me for a transcript of the reporter's notes of the evidence adduced and proceedings had in this suit; that I have carefully prepared a transcript of said notes, and that the foregoing 33 pages (together with the original exhibits hereto attached and those accompanying this record) constitute a full, true and correct transcript of all the evidence and proceedings shown; and that I am now filing an original and duplicate copy thereof in question and answer form among the papers in said cause.

To all of which I certify on this the 16 day of April, A. D., 1945.

Earl B. Tippit, Court Reporter.

[fol. 53] AGREEMENT OF COUNSEL

We, the undersigned, attorneys of record for plaintiff and defendant in cause No. 1679, styled the State of Texas versus A. R. Tucker, do hereby agree that the foregoing pages numbered 1 through 33 (together with the original exhibits

attached and those accompanying this record), constitute a true and correct transcript of all the oral testimony introduced upon the trial of this cause, together with the exceptions and objections to the introduction of testimony and the exceptions and objections to the exclusion of testimony, with the ruling of the court thereon (and the testimony excluded), and agree that the same may be filed as the Statement of Facts in said cause.

Dated this 17 day of April, A. D. 1945.

Frank X. Vance, Attorney for the State; Tom S. Williams, Attorney for the Defendant.

[fol. 53a] DEFENDANT'S EXHIBIT No. 1

Watchtower Bible College of South Lansing, New York

Hereby be it known that Arthur Raymond Tucker,

An Ordained Minister of the Gospel, has completed the full course of study and training of this college, with merit. He is therefore graduated as specially qualified to engage in educational work, promoting good-will and working in behalf of permanent peace and the law of perfect order and righteousness, among all peoples. He is specifically recommended for service as a representative of the founders of this college, the Watchtower Bible and Tract Society, to colabor with them in preaching the gospel of Jehovah God's kingdom by Christ Jesus.

June 23, 1943. N. H. Knorr, President; A. D. Schroeder, Registrar.

[fol. 54] IN COUNTY COURT OF MEDINA COUNTY

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal

PETITION FOR APPEAL

Considering himself aggrieved by the final decision of the County Court of Medina County, Texas, in the above entitled cause, the appellant herein, A. R. Tucker, hereby prays that an appeal be allowed to the Supreme Court of

the United States herein, and for an order allowing same and fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of state legislation is drawn in question, to wit, Article 479, chapter 3 of the Texas Penal Code, reading as follows:

> "Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars."

Said statute was in force and effect at the time of the offense alleged in the complaint. It is drawn in question upon the ground that it is repugnant to the First and Fourteenth Amendments to the United States Constitution, insofar as it has been construed as a means of enforcing with criminal sanctions a regulation of the Federal Public [fol. 55] Housing Authority, adopted under the authority vested by Section 1548 of Title 42 of the United States Code. Said regulation prohibited peddlers, solicitors and hawkers from plying their trade in the Hondo Navigation Village without the prior permission of the Village Manager.

The County Court of Medina County, Texas, became the court of last resort in this cause by reason of the fact that this criminal action originated in the Justice Court for Precinct No. 1, Medina County, and was duly appealed to the County Court of Medina County where the cause was tried on appeal *de novo*, and the fine assessed against the appellant did not exceed the sum of $100. Under Article 53 of the Code of Criminal Procedure in such circumstance an appeal cannot be had to the Court of Criminal Appeals of Texas, the highest appellate court of criminal cases in Texas, and said judgment is final.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. secs. 344 and 354, and Section 237 (a) of the Judicial Code, the appellant respectfully shows this Court that the case is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed,

to wit, under Section 237 (a) of the Judicial Code (28 U. S. C., s. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The County Court of Medina County, Texas, court of last resort in this cause, rendered its decision herein on the 29th day of January 1945. Thereafter, within the time allowed by law a motion for new trial was filed by appellant. That motion was overruled on March 5, 1945 and the judgment of the County Court thereupon became final.

[fol. 56] ASSIGNMENTS OF ERROR

Now comes the appellants in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that they are errors committed by the court below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court says that the court below erred in denying appellant's motions to dismiss filed (a) at the close of the case for the State [5]* and (b) at the close of all the evidence [6-7], and also in entering judgment of conviction, because

1. The statutes and the regulation, insofar as they have been construed and applied by the court below to allow the owner of the sidewalks and streets within the Village arbitrarily to prohibit appellant from distributing in an orderly manner Bible literature explaining God's Kingdom to persons residing in said Village, constitute an unreasonable abridgment of appellant's rights of freedom of speech, press, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(a) The use to which the property in question has been dedicated by the Federal Public Housing Authority creates a relationship between the owner and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal

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* Bracketed figures throughout this statement refer to page numbers of typewritten transcript of testimony.

corporations likewise apply to the Village management as a *de facto* municipal corporation.

(b) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a [fol. 57] means of enforcing with criminal sanctions the regulation of the Federal Public Housing Authority that Jehovah's witnesses obtain a permit from the housing manager of the Village before preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

(c) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Federal Public Housing Authority on the activity of Jehovah's witnesses in preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

2. As they have construed and applied by the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statutes and the regulation are presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that they are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

3. The statutes and the regulation are unconstitutional on their face and as construed and applied by the court below in that they are not narrowly drawn laws that define and punish specific conduct, but are vague, indefinite, uncertain, too general, fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a dragnet, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

[fol. 58] PRAYER FOR REVERSAL

For and on account of the above errors, the appellant, A. R. Tucker, prays that the said judgment of the County Court of Medina County, Texas, hereinbefore described in the above entitled cause be reviewed by the Supreme Court

of the United States and reversed, and a judgment rendered in favor of appellant and for his costs.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York. Telephone Triangle 5-1474; Attorney for Appellant. Tom S. Williams, Attorney at Law, 2516 Pleasant Rd., San Antonio, Texas.

[fol. 59] In County Court of Medina County

[Title omitted]

Order Allowing Appeal

Appellant, A. R. Tucker, in the above entitled cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment rendered by the County Court of Medina County, Texas, on January 29, 1945, and made final on March 5, 1945 by overruling of defendant's motion for new trial, all of which was duly entered of record in the criminal minutes of this court.

It appearing that the appellant in his motions and argument of counsel made in his behalf in this cause attacked the statute in question on the grounds, as contended by him, that it was void and in excess of the police power of the State because it conferred arbitrary and discriminatory power upon the Manager of the Hondo Navigation Village and that as construed and applied it was violative of the fundamental freedoms guaranteed and secured by the First and Fourteenth Amendments to the Constitution of the United States, all of which contentions were overruled by the decision and judgment of this court rendered herein, and

It appearing that appellant has presented and filed his petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) [fol. 60] months from date of said final judgment of the County Court, the court of last resort in Texas under which a decision can be had in this cause, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It Is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United

States from the judgment of the County Court of Medina County, Texas, in the aforesaid cause as provided by law, and

It Is Further Ordered that the Clerk of the County Court of Medina County, Texas, shall prepare and certify a transcript of the record, stipulation of the evidence together with all exhibits in their original form incorporated by reference, the proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within twenty (20) days from this date.

And It Is Further Ordered that a bond on appeal for appearance and costs on appeal be fixed in the sum of Five Hundred ($500) Dollars and appellant having presented an undertaking conditioned as required by law in the sum of Five Hundred ($500) Dollars executed by good and sufficient sureties, it is farther ordered that such undertaking or bond be and the same is hereby approved and ordered filed.

It Is Further Ordered that the issuance of capias profine be stayed pending a final disposition of this appeal and until the return of the mandate from the Supreme Court of the United States.

Done at Hondo, Medina County, Texas, on this 17th day of April A. D. 1945.

Arthur H. Rothe, Judge of County Court of Medina County, Texas.

[fols. 61-90] Citation in usual form showing service on Francis X. Vance omitted in printing.

[fol. 91] STATEMENT OF POINTS RELIED ON—Filed May 25, 1945

Comes now appellant, A. R. Tucker, in the above entitled cause and states that the points upon which he intends to rely in the Supreme Court of the United States in this cause are as follows:

1. The statutes and the regulation, insofar as they have been construed and applied by the court below to allow the owner of the sidewalks and streets within the Village arbi-

trarily to prohibit appellant from distributing in an orderly manner Bible literature explaining God's Kingdom to persons residing in said village, constitute an unreasonable abridgment of appellant's rights of freedom of speech, press, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(a) The use to which the property in question has been dedicated by the Federal Public Housing Authority creates a relationship between the owner and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal corporations likewise apply to the Village management as a *de facto* municipal corporation.

[fol. 92] (b) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a means of enforcing with criminal sanctions the regulation of the Federal Public Housing Authority that Jehovah's witnesses obtain a permit from the housing manager of the Village before preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

(c) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Federal Public Housing Authority on the activity of Jehovah's witnesses in preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

2. As they have been construed and applied by the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statutes and the regulation are presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that they are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

3. The statutes and the regulation are unconstitutional on their face and as construed and applied by the court below

in that they are not narrowly drawn laws that define and punish specific conduct, but are vague, indefinite, uncertain, too general, fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a drag-net, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

[fol. 93] For the above reasons the judgment of the County Court of Medina County, Texas, should be reversed.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York. Tom S. Williams, 2516 Pleasanton Road, San Antonio, Texas, Attorneys for Appellant.

[fol. 93a] [File endorsement omitted.]

[fol. 94] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed May 28, 1945

To the Clerk of the Supreme Court of the United States:

Please print the following documents for the printed transcript of the record on appeal to this Court in the above entitled and numbered cause, to wit:

1. The complaint and one-page transcript from Justice of Peace Court.
2. Motion to dismiss, filed in the County Court.
3. Order overruling motion to dismiss.
4. Motion for judgment of acquittal.
5. Order overruling motion for judgment.
6. Stenographer's or reporter's statement of facts containing the evidence as filed in the County Court.
7. Judgment of conviction.
8. Motion for new trial and order overruling same.
9. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.
10. Citation signed by the Judge of the County Court.

11. Order allowing appeal to the Supreme Court of the United States.

12. Statement of points to be relied upon.

Dated: May 26, 1945.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, N. Y., Attorney for Appellant.

[fol. 94a] [File endorsement omitted.]

[fol. 95] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 8, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this question.

Endorsed on cover: Enter Hayden Covington. File No. 49761 Texas County Court of Medina County. Term No. 87. A. R. Tucker, Appellant, vs. The State of Texas. Filed May 24, 1945. Term No. 87 O. T. 1945.